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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MELVYN LIONAL BRUCE,

Defendant and Appellant.

2d Crim. No. B234765
(Super. Ct. No. M438910)
(San Luis Obispo County)

Melvyn Lional Bruce appeals the judgment following his conviction for corporal injury to a spouse/cohabitant with a prior conviction within seven years (Pen. Code, § 273.5, subds. (a) & (e)(1)), unlawful firearm activity (former Pen. Code, § 12021, subd. (c)(1)), misdemeanor false imprisonment, and misdemeanor exhibiting a deadly weapon (Pen. Code, §§ 236, 417, subd. (a)(1)). Bruce was sentenced to five years in prison for the corporal injury offense and two years for unlawful firearm activity to be served concurrently. He contends the trial court erred in admitting evidence of prior uncharged acts of domestic violence and evidence of battered women's syndrome. We affirm.

FACTS

R.F. started dating Bruce in May 2009. R.F. and her son moved in with him in August 2009. On September 10, 2009, R.F. drove her son to school and went grocery shopping. She returned an hour later. As soon as she pulled into the driveway,

Bruce began yelling at her and ranting and raving about various subjects. Bruce continued yelling at R.F. while R.F. put the groceries away. Bruce followed her when R.F. went into her son's bedroom to lie down. Bruce stated that if things were going to be this way, R.F. should take her things and get out. After telling her to leave a second time, Bruce reached for R.F.'s purse and glasses. R.F. got the purse and glasses and went to the closet to get her clothes. Bruce physically prevented R.F. from leaving the room. R.F. became frightened. When she tried to get out of the room, Bruce threw her to the floor. R.F. got up and tried to run away three more times, but Bruce threw her to the ground each time. When Bruce allowed her to leave the room, he followed her, grabbed her, and pushed her into another bedroom. R.F. landed between the bed and dresser. Bruce closed the door and would not let R.F. leave despite repeated pleas from her. R.F. slid to the floor, and Bruce yanked her towards him by her hair. Bruce punched R.F. full force in the shoulder. Bruce hit her two more times and repeatedly threw her down on the bed. Bruce put his hands on her neck and strangled her.

Bruce then stated he was going to kill himself, got a gun from a closet, and loaded it. R.F. tried to calm him. Bruce then relaxed, dropped the gun, and the outburst ended.

R.F. ran to her car, picked her son up from school, and left him with a friend to watch. She also called Bruce's sister to warn her that he was threatening suicide and told the sister that Bruce had hit her. R.F. did not call 911 because she did not want her son to know what had happened. Instead, she drove to her former place of employment and talked to Tara Stillwell. Stillwell noticed that R.F. had red marks on her shoulder and neck and that her clothes were disheveled. R.F. told Stillwell that she had gotten into an argument with Bruce who told her that this was not going to work. She told Stillwell that Bruce had shoved her and a gun was involved. She stated that Bruce threatened suicide and she was worried about her son. Stillwell told R.F. that she could call the police from her house. During the 911 call, R.F. told police that Bruce had physically assaulted her and threatened to shoot himself.

Two prior victims of domestic abuse at the hands of Bruce testified at trial. N.H. testified that she dated Bruce from 1988 to 1996, and that the relationship was abusive. In one incident, Bruce grabbed her by the hair, picked her off the ground, and threw her. Another time, Bruce chased her while both were driving cars and caused an accident. Another time, Bruce broke a jewelry box and held a gun against N.H. Another time, Bruce jumped through a window and chased N.H. through her house. N.H. reported one incident to the police but did not report the others because she wanted to preserve her relationship with Bruce and Bruce always said the violence would not happen again.

C.H. testified to an abusive relationship with Bruce from 1998 to 2008. In one incident, Bruce prevented her from walking away from him during an argument by grabbing her and dragging her back. In another incident, Bruce slapped her and, when she locked herself in the bathroom, kicked the door down and hit her with a closed fist. Another time, he choked her in front of her children. Another time, he dragged her back into their house by the legs when she tried to leave. Another time, he grabbed her by the hair causing her to fall. C.H. did not report any of the incidents to the police because it would be "embarrassing," and she wanted to believe that each incident would be the last.

DISCUSSION

No Error in Admission of Evidence of Prior Acts

Bruce contends the trial court erred by admitting testimony by N.H. and C.H. concerning prior acts of domestic violence. (Evid. Code, § 1109.)¹ We disagree.

Where domestic violence is charged, evidence of a defendant's commission of other acts of domestic violence is admissible to prove a propensity to commit such acts, subject to the trial court's discretion to exclude evidence where its probative value is substantially outweighed by its prejudicial effect. (§ 1109, subd. (a).) In determining the admissibility of such evidence, trial courts should weigh a variety of factors, including the similarity of the uncharged acts to the charged offense, the nature of the prior acts and

¹ All further statutory references are to the Evidence Code unless otherwise stated.

whether they were more inflammatory than the charged offense, remoteness in time of the prior acts, and whether the defendant was convicted of the prior acts. (*People v. Falsetta* (1999) 21 Cal.4th 903, 917; see also *People v. Rucker* (2005) 126 Cal.App.4th 1107, 1119.) It should be emphasized, however, that section 1109 reflects a legislative determination that evidence of prior acts of domestic violence is highly relevant, despite its potential prejudicial impact, and is admissible as propensity evidence in prosecutions for domestic violence. (*People v. Trujillo Garcia* (2001) 89 Cal.App.4th 1321, 1335; *People v. Johnson* (2000) 77 Cal.App.4th 410, 419.) A trial court's ruling will be upheld unless the court acted in an arbitrary or capricious manner that resulted in a manifest miscarriage of justice. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004.)

In this case, the prior domestic violence evidence was relevant and probative because the incidents involved similar acts of physical violence by Bruce against domestic partners and, together with the charged offense, show a pattern of domestic violence. This is precisely what the Legislature was concerned with in enacting section 1109. (*People v. Hoover* (2000) 77 Cal.App.4th 1020, 1027-1028.) There was no abuse of discretion in admitting the evidence.

Bruce argues that the prior incidents were more inflammatory than the charged offense because they involved more serious physical violence. Prior incidents included holding N.H. in Bruce's residence against her will for days, kicking down the door when C.H. locked herself in a bathroom, multiple incidents of punching and choking, and a serious back injury to N.H.

Some of the prior incidents appear to have been more violent than the charged offense, but, to be admissible, the evidence need not be so similar to the charged offense as to meet the requirements of section 1101. (See *People v. Callahan* (1999) 74 Cal.App.4th 356, 367-368; *People v. Soto* (1998) 64 Cal.App.4th 966, 986.) Moreover, the level of physical violence in the charged offense was also serious and the prior acts were not significantly more inflammatory than the charged offense. In both the uncharged acts and the charged offense, Bruce assaulted and manhandled the victims,

restrained their freedom of movement, and asserted dominance and control. The force used by Bruce in strangling R.F. was sufficient to cause her to fear for her life.

In addition, Bruce argues that the prior acts were remote in time. Although the prior acts extend 20 or more years into the past, they show a continuous recurrence of domestic violence extending from that time until 2008. None of the incidents were excessively remote in time, and some were recent.

The trial court also admitted evidence that Bruce pulled out a gun during a fight with N.H. under section 1101, subdivision (b) to show a common plan, scheme or modus operandi of brandishing a firearm during acts of domestic violence. We agree with the trial court that use of a firearm to intimidate more than one domestic partner shows a common method of violence and intimidation.

No Error in Admission of Battered Women's Syndrome Testimony

Bruce contends the trial court erred in admitting expert testimony on battered women's syndrome, now referred to as "intimate partner battering" in section 1107. Bruce argues that the testimony was irrelevant because there was no evidence that he and R.F. were in an extended relationship involving ongoing abuse, or that R.F. suffered from the symptoms of the syndrome. We disagree and conclude that the expert testimony was properly admitted to help jurors understand R.F.'s conduct immediately after the offense.

"In a criminal action, expert testimony is admissible . . . regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge." (§ 1107, subd. (a).)

Generally, such evidence is relevant to explain the unusual behavior of domestic violence victims in minimizing the violence they experienced, and declining to report the violence to the police or recanting statements to police. (*People v. Brown* (2004) 33 Cal.4th 892, 906-907.) "Even if the defendant never expressly contests the witness's credibility along these lines, there is nothing preventing the jury from ultimately finding in its

deliberations that the witness was not credible, based on misconceptions that could have been dispelled by [battered women's syndrome] evidence." (*People v. Riggs* (2008) 44 Cal.4th 248, 293.) The trial court's decision to admit expert testimony on battered women's syndrome is reviewed for abuse of discretion, and will be upheld unless the trial court acted in an arbitrary or capricious manner that resulted in a miscarriage of justice. (*People v. Lindberg* (2008) 45 Cal.4th 1, 45.)

Here, Bonita Vargas testified as an expert on battered women's syndrome. She testified that the syndrome was a sub-category of post traumatic stress disorder, and that many victims lose self-esteem, believe they cannot leave the relationship, convince themselves that the relationship can be saved, and even blame themselves for the abuse they suffer. In answering a hypothetical based on the facts of the case, the expert testified that R.F.'s behavior was consistent with that of a battered woman. R.F. acted in an "orderly" fashion by attending to the safety of her son before calling the police.

Bruce argues that the record provides no basis to conclude that R.F. suffered from, or manifested any of the symptoms of, battered women's syndrome and, therefore, that the evidence was irrelevant. Bruce emphasizes that he and R.F. had only a four-month relationship with one incident of domestic abuse, not a long-term relationship with repeated violence. Bruce's argument is not persuasive on either the state of the evidence or the law.

It is clear that evidence of battered women's syndrome is admissible only if it is relevant. Section 1107, subdivision (b) requires the proponent of the evidence to establish its relevance, and our Supreme Court has stated that there must be "an adequate foundation for a finding that the [victim] witness has been affected by BWS." (*People v. Riggs, supra*, 44 Cal.4th at p. 293.)

Here, there was an adequate foundation that R.F. was "affected" by battered women's syndrome. The expert testified in answer to a hypothetical that behavior after the violence similar to that of R.F. would not be inconsistent with the behavior or demeanor of a battered woman. She testified that there are many ways a battered woman reacts to abuse and that many victims "will present in a very calm, orderly, and maybe

even emotionally flat way." She also testified that, although most victims never call the police, some engage in an "orderly process of trying to get out of the situation, take care of safety, and then proceed with calling law enforcement."

Such testimony describes the actual reaction of R.F. R.F. first picked up her son from school and took him to stay with a friend because she was concerned for his safety. R.F. then told an acquaintance at her former place of employment a version of the incident which appeared to understate the violence but mentioned her son's safety, the future of her relationship with Bruce, and Bruce's suicide threat. Then, R.F. called the police to report the incident.

The expert's testimony that a battered woman situation typically involved greater and repeated violence by the abuser over a longer period of time does not undermine her testimony that R.F. reacted in a manner consistent with the syndrome. In fact, testimony regarding the typical battered woman may have been to Bruce's advantage. (*People v. Gadlin* (2000) 78 Cal.App.4th 587, 595.)

Furthermore, it is now established that evidence of a single incident of domestic violence can be sufficient to warrant admission of battered women's syndrome testimony. One case, *People v. Gomez* (1999) 72 Cal.App.4th 405, 417-419, held that battered women's syndrome testimony should have been excluded as irrelevant where there was no showing of domestic violence other than a single incident, but that holding has been disapproved by our Supreme Court. (*People v. Brown, supra*, 33 Cal.4th at pp. 898-908.) *Brown* concluded that expert testimony on domestic violence is not barred where there is evidence of only one incident of violent abuse. (*Ibid.*) The Supreme Court held that expert witness testimony about the behavior of domestic violence victims is admissible under section 801 whenever it can assist the trier of fact in evaluating the credibility of a victim's trial testimony even where there is evidence of only one such violent incident. (*Id.* at pp. 895-896, 908; see also *People v. Williams* (2000) 78

Cal.App.4th 1118, 1128-1130.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Jacquelyn Duffy, Judge
Superior Court County of San Luis Obispo

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